

REPORT ON GOVERNOR'S INITIATIVE RE: ENVIRONMENTAL CONTINGENCY ACCOUNT

A Report Prepared for the

Legislative Finance Committee

By

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PURPOSE AND SCOPE

This report discusses whether spending \$100,000 from the environmental contingency account for an engineering study on the St. Mary Facilities is in compliance with 75-1-1101, and provides the Legislative Finance Committee with policy options regarding this issue.

HISTORY

In an effort to find a stable water supply for irrigation, early settlers in the Milk River Watershed built small dams and small individual canals. The Reclamation Act of 1902 authorized construction and maintenance of irrigation infrastructure for the storage, diversion, and development of waters for reclamation purposes. In 1903, under this act, the Secretary of the Interior authorized the Milk River Project.

The objective of the Milk River Project was to provide a stable source of irrigation water to the lower Milk river valley. However, settlers discovered that the Milk River did not have enough water to support all of the users. Thus, a decision was made to divert water from the St. Mary River to the Milk River to supplement water during peak periods of use. On March 25, 1905, after a review of several options, the Secretary of the Interior authorized construction of the St. Mary Diversion Dam and Canal with \$1.0 million set aside for construction.

FUNDING SOURCE FOR REPAIRS

The St. Mary Facilities are located on the Blackfeet Reservation in Glacier County and consists of a storage dam (Sherburne Dam), diversion dam, head gate, 29 miles of canal steel siphons, and five concrete drop structures.

Currently, the St. Mary Facilities are used for large-scale agriculture operations in the Milk River Basin. The system provides water to irrigate over 110,000 acres on approximately 660 farms and provides municipal water to approximately 14,000 people in the communities of Havre, Chinook, and Harlem. Other beneficiaries include fisheries, recreation, tourism, water quality, and wildlife.

Over a period of 100 years, the infrastructure has deteriorated. Primary problems include slope stability problems, deteriorating concrete, and leaks. The Department of Natural Resources and Conservation estimates that the structure could fail within 10 years if repairs are not made. If that occurs, the department argues that environmental damage could occur on the Blackfeet Reservation and in southern Alberta. Further, they indicate that irrigated agriculture and the influx of local dollars it generates would cease to exist.

Citing potential of the facilities to fail within 10 years and economic value to the area, the Governor is proposing to use \$100,000 of the environmental contingency account to pay for an engineering study to determine the scope of repairs on the St. Mary Facilities. State law dictates how the money in the environmental contingency account is to be spent. Since engineering studies are not specifically mentioned in the statute as an approved use, Legislative Fiscal Division Staff sought input from legal services regarding using the fund for this purpose.

As stated in a memo to LFD staff authored by Mr. Greg Petesch, the Legislative Branch Legal Services Director, "...The proposed use meets the definition of a "renewable resource development project" in section 75-1-1101(3)(a), MCA". However, Mr. Petesch continues by pointing out that the project does not appear to meet one of the legal requirements of statute. Statute indicates that authority is statutorily appropriated and the money can only be used upon the authorization of the Governor to meet unanticipated public needs. According to Mr. Petesch's memo, the need to repair a 100-year old facility is not "unanticipated."

Mr. Petesch continues by pointing out that the Department of Natural Resources discussed its desire for the state to be financial involved with the St. Mary Project with several legislative committees during the 2003 legislative session. Because of those discussions, he points out that it would be difficult to conceive that spending money for this project would be considered "unanticipated" as required by statute. Thus, spending money from the environmental contingency account for an engineering study would not be a legal use of the money.

Further, there are other indications that the repairs to the facilities at St. Mary were not unanticipated. For example, during the 2003 legislative session, the legislature prioritized a \$100,000 grant award in HB 6 from the renewable resources grant and loan program for a St. Mary siphon expansion joint replacement. In addition, the legislature prioritized a grant award from the reclamation and development account in HB 7 in the amount of \$110,818 for St. Mary diversion repairs. Consequently, a state monetary commitment was not only discussed, it was acted upon. Thus, the use of this money for other facets of the project cannot be considered "unanticipated."

OPTIONS

There are two options the Legislative Finance Committee may wish to pursue:

- 1) Send a letter to the Governor that states that Legislative Branch legal counsel has determined that using money from the environmental contingency account for an engineering study at the St. Mary Facilities is not legal; or
- 2) Take no official action